

IN THE UTAH COURT OF APPEALS

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State of Utah, in the interest)	MEMORANDUM DECISION
of A.M. and M.B., persons)	(Not For Official Publication)
under eighteen years of age.)	
_____)	Case No. 20050752-CA
)	
M.B.,)	F I L E D
)	(December 8, 2005)
Appellant,)	
)	2005 UT App 531
v.)	
)	
State of Utah,)	
)	
Appellee.)	

Third District Juvenile, Tooele Department, 148955
The Honorable Dane Nolan

Attorneys: Wayne A. Freestone, Salt Lake City, for Appellant
Mark L. Shurtleff and John M. Peterson, Salt Lake
City, for Appellee
Martha Pierce and Jim Michie, Salt Lake City,
Guardians Ad Litem

Before Judges Bench, Greenwood, and McHugh.

PER CURIAM:

M.B. (Mother) appeals the termination of her parental rights in A.M. and M.B.¹ Mother challenges the sufficiency of the evidence supporting the juvenile court's findings.

In reviewing an order terminating parental rights, this court "will not disturb the juvenile court's findings and conclusions unless the evidence clearly preponderates against the findings as made or the court has abused its discretion." In re R.A.J., 1999 UT App 329, ¶6, 991 P.2d 1118 (quotations and citation omitted). A juvenile court's findings of fact will not

¹In Case No. 20050764-CA, the father of M.B. appeals the termination of his parental rights in M.B. He is not the father of A.M.

be overturned unless they are clearly erroneous. See In re E.R., 2001 UT App 66, ¶11, 21 P.3d 680. A finding of fact is clearly erroneous only when, in light of the evidence supporting the finding, it is against the clear weight of the evidence. See id. Further, we give the juvenile court a "'wide latitude of discretion as to the judgments arrived at' based upon not only the court's opportunity to judge credibility firsthand, but also based on the juvenile court judges' 'special training, experience and interest in this field.'" Id. (citation omitted).

Mother argues that there was insubstantial evidence to substantiate the juvenile court's findings that: (1) Mother neglected or abused the children, pursuant to Utah Code section 78-3a-407(1)(b); (2) Mother is an unfit or incompetent parent, pursuant to Utah Code section 78-3a-407(1)(c); (3) Mother is unable or unwilling to remedy the circumstances that caused the children to be in out-of-home placements and will not be capable of exercising proper and effective parental care in the near future, pursuant to Utah Code section 78-3a-407(1)(d); and (4) there has been a failure of parental adjustment because Mother is either unable or unwilling to substantially correct the conditions that led to the placement of the children outside her home, pursuant to Utah Code section 78-3a-407(1)(e). Under Utah Code section 78-3a-407(1), the finding of any single ground is sufficient to warrant termination of parental rights. See Utah Code Ann. § 78-3a-407(1) (Supp. 2005) (providing that the court may terminate all parental rights if it finds any one of grounds listed); see also In re F.C. III, 2003 UT App 397, ¶6, 81 P.3d 790 (noting that any single ground is sufficient to terminate parental rights). Accordingly, if any one of the grounds found by the juvenile court to terminate Mother's parental rights is supported by the record, such ground is sufficient to warrant termination of Mother's parental rights.

First, the record supports the juvenile court's findings of abuse, neglect, and unfitness. It is undisputed that Mother has a drug problem and had that she had methamphetamine and marijuana in her system at the time her children were removed from her home. At the time, she was five months pregnant with M.B. The State presented evidence through A.M.'s case worker and therapist that A.M. recounted episodes of physical abuse and domestic violence at home. Further, she recounted several episodes of sexual abuse at the hand of her older brother and indicated that Mother knew of the activity. While Mother disputed these statements, the juvenile court found that Mother's testimony in this regard lacked credibility and rejected such testimony. Further, A.M. told these same individuals that she witnessed Mother using drugs, knew exactly where those drugs were stored, and could identify other persons in town who regularly used drugs with Mother. Accordingly, the record supports the conclusion

that A.M. was an abused and neglected child and Mother was unfit. See Utah Code Ann. § 78-3a-408(2) (2002).

Furthermore, based upon these findings and conclusions, M.B. was also a neglected child because she was a minor "who [was] at risk of being a neglected or abused child . . . because another minor in the same home [was] a neglected or abused child." Utah Code Ann. § 78-3a-103(1)(s)(i)(E) (2002). As such, the evidence adduced by the State demonstrating that A.M. was abused and neglected was also sufficient to demonstrate that M.B. was neglected. See In re J.B., 2002 UT App 267, ¶22, 53 P.3d 958 (concluding evidence of abuse and neglect of older siblings was sufficient to demonstrate infant was also neglected).

Because the juvenile court did not err in concluding that A.M. and M.B. were neglected or abused children and that Mother was unfit, there are sufficient grounds to affirm the termination of parental rights. The record also supports the juvenile court's findings that Mother was "unable or unwilling to remedy the circumstances that caused the children to be in out-of-home placements and will not be capable of exercising proper and effective parental care in the near future," as well as failure of parental adjustment for the same reasons. Most importantly, Mother's testimony demonstrated that she is unwilling to listen to her children and provide them the protection and support they need. Next, while Mother did undergo drug treatment therapy and other education programs while in prison, there was no evidence to demonstrate that she continued with such therapy and education programs once she was released from the State's custody. There also was no evidence to demonstrate that Mother had stopped using drugs other than her self-serving testimony found not to be credible by the juvenile court. Further, after being released from prison, both Mother and her husband lived in the homes of persons with whom they associated while using drugs. These facts demonstrate that Mother, while she may have loved her children, was simply unable or unwilling to remedy the circumstances that led to the children being removed in the first instance. See In re M.L., 965 P.2d 551, 562 (Utah Ct. App. 1998) (stating that if a parent has demonstrated some improvement but not a strong likelihood that the parent can provide a proper home to the child in the near future then the appellate court should not overturn a juvenile court's order terminating parental rights).

Thus, the evidence was sufficient to support the termination of Mother's parental rights. The juvenile court's findings of fact were not clearly erroneous. Further, the findings supported

the conclusions and determination that grounds for termination of Mother's parental rights were established.²

Accordingly, the order terminating Mother's parental rights is affirmed.

Russell W. Bench,
Associate Presiding Judge

Pamela T. Greenwood, Judge

Carolyn B. McHugh, Judge

²Mother does not contest the finding that it is in the best interest of the children to have Mother's parental rights terminated. See In re J.B., 2002 UT App 267, ¶22, 53 P.3d 958 (stating that before parental rights can be terminated there must be a showing that parent is below some minimum level of fitness and it is in the best interests of the child to terminate the parent's parental rights).